

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	
)	
Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules)	WT Docket No. 06-169
)	
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010)	WT Docket No. 96-86
)	

To: The Commission

COMMENTS OF THE BLOOSTON RURAL CARRIERS

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SUMMARY

The Blooston Rural Carriers believe the public interest would be served in the upcoming 700 MHz band auctions if the Commission were to create multiple smaller license blocks in both the Upper and Lower 700 MHz Bands, including a new CMA-sized license in each band. Rural incumbent service providers should also be exempt from any restrictions the Commission may consider on incumbent carrier participation in the auction. The Commission should not adopt geographic coverage requirements, and it should instead retain the flexibility of a substantial service build-out option. In the event the Commission should impose geographic coverage requirements on the new 700 MHz licensees, an exemption should be available for rural areas, since the sparse population of many rural areas will simply not support a geographic coverage approach. Moreover, since network buildout in the most remote areas may not be feasible during the initial license term, the FCC should exempt CMA license areas if it should nonetheless decide to adopt a “keep-what-you-use” performance requirement.

With respect to 700 MHz auction procedures, the Blooston Rural Carriers urge the Commission not to adopt “blind bidding” or “package bidding” since this will discourage small and rural bidders from participation in the auction. Finally, the Commission must ensure a level playing field if it chooses to proceed with the Frontline Wireless proposal. If a nationwide competitor is allowed to lease all of its spectrum capacity, the Commission must revisit its designated entity policies and rules and allow *bona fide* small businesses and rural telephone companies the opportunity to do the same.

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The law firm of Blooston Mordkofsky Dickens Duffy & Prendergast, LLP ("Blooston"), on behalf of its rural telephone clients (the "Blooston Rural Carriers") and pursuant to Section 1.419 of the Commission's Rules, hereby submits comments on the Commission's *Further Notice of Proposed Rulemaking* in the above-captioned dockets.¹

As discussed below, the public interest would be served by the creation of multiple smaller license blocks in both the Upper and Lower 700 MHz Bands, including a new CMA-sized license in each band. Rural incumbent service providers should be exempt from any restriction the Commission may consider on incumbent carrier participation in the auction. The anti-competitive concerns that underlie such suggested restrictions do not apply in the unique circumstances faced by rural carriers. The Commission should not adopt geographic coverage requirements, but should instead retain the flexibility of a

¹ See 72 FR 24238 (May 2, 2007) ("*Further Notice*").

substantial service build-out option. In the event that geographic coverage requirements are adopted, an exemption should be available for rural areas, since the sparse population of such areas often will not support a geographic coverage approach. Further, if the Commission adopts a “keep-what-you-use” performance requirement, it should exempt CMA license areas.

Statement of Interest

The Blooston Rural Carriers include numerous rural telephone companies, rural telephone cooperatives, rural telephone affiliates and other small businesses that have a demonstrated commitment to serving rural America. These companies have made substantial investments in their rural communities to ensure that consumers have access to services ranging from basic dial tone (including Lifeline and Link-Up Services), to state-of-the-art commercial mobile radio services (including the obligation to provide enhanced 911 service) to advanced wireline and wireless broadband services using DSL, cable modem and/or wireless technologies. Many of these companies have participated in the FCC’s recent auction of Advanced Wireless Services (or “AWS”) licenses, with mixed success, and many hope to bid in the Commission’s upcoming (though not yet scheduled) auction of commercial wireless licenses in the Upper and Lower 700 MHz Bands. As such, all of the Blooston Rural Carriers play a critical role in bringing telecommunications services to rural America (including access to emergency services), and all have a significant interest in the outcome of this proceeding.

I. The Commission Should Create a New CMA-Sized License in Both the Upper and Lower 700 MHz Bands

The Blooston Rural Carriers applaud the Commission’s decision to use a wide

variety of license sizes, including CMAs, for the upcoming 700 MHz auction.² The Blooston Rural Carriers agree that the Commission should designate the Lower 700 MHz band B-Block as a CMA-sized license because this will create additional bidding opportunities for small and rural carriers, consistent with the requirements of Section 309 (j) of the Communications Act of 1934, as amended (the “Act”). There is now sufficient evidence from prior auctions to show that, when smaller geographic licenses are made available, small and rural carriers are able to successfully bid on the spectrum resources they need;³ and when rural carriers are able to obtain such spectrum, they bring wireless services to rural America. *Id.* at p. 3 (68% of rural wireless survey respondents are providing wireless services to their customers).

In addition to licensing the remaining spectrum in the Lower 700 MHz band as proposed in the *Further Notice*, the Blooston Rural Carriers urge the Commission to license the commercial spectrum in the Upper 700 MHz Band using a mix of REAG, EA and CMA geographic licensing areas as well. In this regard, if the Commission decides to eliminate the Guard Band B-Block, the Blooston Rural Carriers support the Upper 700 MHz band plan discussed in “Proposal 2”, with CMA licensing areas used for the Upper 700 MHz C-Block. Such a band plan would enhance economic opportunities and access for the provision of telecommunications services by designated entities, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, as well as afford larger bidders the flexibility to aggregate smaller markets and secure spectrum rights that are tailored to their specific business plan.

² *Further Notice* at Paras. 42-49.

³ See, e.g., NTCA 2006 Wireless Survey Report, (*rel.*, January 2007) at p. 11 (available online at http://www.ntca.org/content_documents/2006NTCAWirelessSurveyReport.pdf).

In the alternative, if the FCC decides it should modify (rather than eliminate) the Guard Band B-Block, the Blooston Rural Carriers believe that “Proposal 5” would be the best option because splitting the larger 22 megahertz block into two 11 megahertz blocks will increase the opportunity for carriers to acquire spectrum in areas where they intend to provide service and it would allow for the greatest diversity among Upper 700 MHz Band licensees. However, the Blooston Rural Carriers urge the Commission to modify Proposal 5 so the two proposed EA-sized licenses are instead auctioned as an EA- and a CMA-sized license, giving small and rural carriers another license on which they can realistically bid.

It is respectfully submitted that the public interest would best be served by having two (2) CMA-sized licenses available for bidding (*i.e.*, one in each of the Upper and Lower 700 MHz bands) in the upcoming 700 MHz auction. First, the results from last year’s AWS auction prove that CMA-sized licenses not only benefit small carriers but can be used by larger carriers to fill holes in their coverage. Second, the licenses available for auction feature smaller channel blocks (in terms of bandwidth), and there is a legitimate possibility that many bidders will need to assemble two blocks of this spectrum for the advanced services they intend to provide. The success of last year’s AWS auction (“Auction No. 66”) came in large part because the FCC used a mix of geographic license sizes. The CMA-sized A-Block license in that auction provided 20 megahertz of spectrum. Allowing a bidder to assemble two CMA-sized licenses in the same market in the upcoming auction would yield approximately the same amount of spectrum as the AWS A-Block, and make comparable service opportunities possible for every bidder.

The AWS auction also demonstrated that larger carriers can and will assemble regional footprints using smaller licenses. *See, e.g.*, Results of FCC Auction No. 66 in which SpectrumCo. LLC was a successful bidder for substantially all of the EA-sized B-Block AWS licenses. Creating two CMA-sized licenses will minimize the likelihood that small businesses and rural carriers (and other designated entities) will be deprived of meaningful bidding opportunities if a larger carriers like SpectrumCo. decides to aggregate CMA-sized licenses.

II. The Commission Should Not Impose Auction Eligibility Restrictions or Secondary Market Restrictions on Incumbent Rural Carriers

The *Further Notice* seeks comment on a proposal by Media Access Project and the Ad Hoc Public Interest Spectrum Coalition (“PISC”) to exclude incumbent local exchange carriers (“ILECs”), incumbent cable operators, and large wireless carriers from eligibility for licenses in the 700 MHz Band.⁴ The Blooston Rural Carriers strenuously oppose any type of auction or secondary market restrictions for small businesses and rural incumbents with respect to the 700 MHz spectrum. As discussed below, such restrictions would increase costs and severely restrict bidding and service opportunities for small and rural ILECs, contrary to the requirements of Section 309(j) of the Communications Act. Moreover, incumbent rural service providers are often the only entities in a position to ensure that individuals and businesses in sparsely populated areas have reasonable and timely access to advanced telecommunications capability. As such, rural incumbents play a vital role in helping the Commission to fulfill its statutory

⁴ *See Ex Parte* Comments of the *Ad Hoc* Public Interest Spectrum Coalition, PS Docket No. 06-229 and WT Docket Nos. 06-150, 05-211, 96-86, at 9, 18-19 (filed Apr. 3, 2007) (“PISC Apr. 3 *Ex Parte* Comments”). PISC has suggested a prohibition on such incumbents gaining access to the 700 MHz band either by auction or through secondary market transactions. In the alternative, PISC has proposed that such restrictions apply to the E-Block license proposed by Frontline.

mandate under Section 706 of the Act. Accordingly, the FCC should not adopt any type of auction or secondary market restrictions on rural incumbent access to 700 MHz spectrum.

The Blooston Rural Carriers believe that auction and secondary market spectrum use restrictions ignore the realities of providing service in rural America, and the anti-competitive concerns that underlie such suggested restrictions do not apply to the unique circumstances faced by rural carriers. Rural telephone companies and cooperatives quite simply lack the means to “warehouse” spectrum, and they likewise are not in a position to bid just to forestall potential competition. To the contrary, as the Commission’s records will show, America’s rural telephone companies and cooperatives are often the only entities that are willing and able to provide service in many rural areas (*i.e.*, areas that have an average population density of less than 100 persons per square mile); and this is especially true in the most remote rural areas where population densities may in fact be *less than 20 persons per square mile*. Because areas such as these often do not present an attractive business case for outside investors, rural incumbents - *i.e.*, businesses that have a demonstrated commitment to serving rural communities and cooperatives that, in actual fact, are the community – are central to helping the Commission to fulfill its statutory mandates. Accordingly, rural incumbent service providers should be exempt from any restriction the Commission may see fit to impose on incumbent carrier participation in the auction or access to spectrum in the secondary market.

For the same reasons, the Commission should reject PISC’s suggestion that incumbent carriers should be restricted from utilizing “E-Block” spectrum that the Commission may allocate for licensing to Frontline Wireless, LLC (“Frontline”) or a similar entity. While the Blooston Rural Carriers have significant reservations about the

Frontline proposal (as discussed below), if the Commission nonetheless sees fit to adopt such a proposal, its harmful effects may be partially mitigated if small and rural carriers have the ability to enter into flexible arrangements to construct and/or operate portions of an E-Block licensee's nationwide network, or otherwise lease spectrum capacity from such an entity on the same terms as any other company.

The record in this proceeding is devoid of any evidence that rural incumbents have acted in an anti-competitive manner in the past. To the contrary, it has been relatively easy for competitors to enter rural markets that they deemed profitable enough to serve. Businesses such as Western Wireless and ALLTEL have been able to establish competing operations via wireless, and they have benefited from the availability of universal service funding via Eligible Telecommunications Carrier (or "ETC") status. If the Commission adopts a 700 MHz band plan that offers more than one new CMA licensing opportunity, this will clearly provide more room for competition. Therefore, the Commission does not need to impose a 700 MHz "structural separation" requirement on rural carriers, since this will only serve to raise their costs and drain limited resources that are better spent in extending their rural networks. For the same reasons, small business bidding credits should be available to rural incumbents in the same manner as new entrants.

III. The Commission Should Retain a Substantial Service Construction Benchmark for Rural Areas, and "Keep What You Use" Performance Requirements Should Not be Used for CMA-Sized Licenses

The Commission should not adopt geographic coverage requirements exclusively, but should instead maintain the flexibility of a substantial service build-out option for rural areas. In the event that geographic coverage requirements are adopted, an exemption should be available for rural areas, since the sparse population of such areas

often will not support a geographic coverage approach. Further, if the Commission adopts “keep-what-you-use” performance criteria, it should exempt CMA licenses from this requirement.

The FCC has made numerous public interest findings about the benefits of providing licensees with a “substantial service” buildout option. Indeed, in the *Rural Spectrum Report and Order* (which was adopted less than three years ago), the Commission extended the substantial service construction benchmark to all wireless services that are licensed on a geographic area basis.⁵ In so doing, the Commission made the following observation:

Based on the record before us, we believe that modifying our rules to permit these additional licensees to satisfy their construction requirements by providing substantial service will increase their flexibility to develop rural-focused business plans and deploy spectrum-based services in more sparsely populated areas without being bound to concrete population or geographic coverage requirements.⁶

The Commission further concluded that the additional flexibility afforded by a substantial service option would free licensees to develop construction plans that tailor the deployment of services to needs that are otherwise unmet, such as the provision of service to rural or niche markets; and that this would increase parity among geographic area licensees.⁷

In the experience of the Blooston Rural Carriers, sustainable coverage in sparsely

⁵ Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation, WT Docket No. 03-202, *Report and Order and Further Notice of Proposed Rulemaking*, 33 CR 1162, 19 FCC Rcd 19078 (September 27, 2004).

⁶ *Id.* at Para. 76.

⁷ *Id.*

populated rural areas often takes time to develop. In other words, a critical mass must first be attained by providing service in more populated communities and along well-traveled highways before service is economically feasible in smaller towns and along secondary roadways. Increasing the power levels at which licensees are permitted to operate rural 700 MHz Band wireless networks – as the Commission has done in its 700 MHz Report and Order – should help rural licensees to extend their networks more quickly into less densely populated areas. The Commission should retain the more flexible substantial service build out option, at least for RSA licenses.

IV. Blind Bidding or Package Bidding Auction Procedures Would Unfairly Disadvantage Rural Carriers and Small Businesses

The Commission should not adopt “blind bidding” auction procedures for the 700 MHz auctions since this would disadvantage small businesses and rural carriers. The Blooston Rural Carriers and many others are uncomfortable with such a significant departure from procedures that worked fine in dozens of spectrum auctions up to now, and urge the Bureau to return to what has become standard practice. Moreover, any speculative benefit in “economic efficiency” that the Commission or any supporting commenters hope to gain from making less bidder information available will be vastly outweighed by bidder confusion and uncertainty with the new procedures. Small carriers will have greater confidence in the 700 MHz auction results, and they will bid with more certainty, if they know who they are bidding against, and the total bidding eligibility of their opponents.

Likewise, package bidding should *not* be available for any CMA- or EA-sized channel blocks that are available in the upcoming 700 MHz auctions, since this would be extraordinarily complex when a large number of licenses are involved (such as the 734

CMAAs or 176 EAs). Package bidding would unduly complicate the bidding for small and rural carriers, who do not have the resources to hire teams of economists and “game theory” experts. More importantly, package bidding could deprive these entities of meaningful opportunities to participate in the 700 MHz Band service. Unlike a license-by-license aggregation strategy (which the Commission’s auction procedures allow), package bidding could result a situation where the Commission is forced to accept a package bid for a group of licenses, even though a small business or rural telephone company (or any competing bidder, for that matter) may have placed a higher bid – on a per pop basis – for one or more of the bids included in the package. This would raise legal issues as to whether the FCC actually granted these licenses to the party that valued them most highly, as well as effectively undo the Commission’s good work in creating a viable bidding opportunities for small businesses and rural telephone companies through the use of CMA licensing.

V. Rural Carriers have Genuine Concerns about the Frontline Wireless Proposal

The Blooston Rural Carriers support the Commission’s proposed reconfiguration of the 700 MHz Public Safety Band to allow for broadband public safety use. The development of an integrated, nationwide, interoperable network to provide first responders with broadband communications capability is a novel idea that promises many benefits. Developing an IP-based broadband wireless network would allow for many enhanced voice and data applications, as well as interoperability parameters that are flexible and software-defined. And allowing a portion of the existing 24 megahertz of public safety spectrum set aside from the Upper 700 MHz band to be used for broadband deployment would be consistent with the intent of Congress, as expressed in Section

337(a) of the Act.⁸ This provision requires the Commission to allocate 24 megahertz of the spectrum between 746 MHz and 806 MHz for public safety services, and to allocate 36 megahertz of that spectrum for commercial use to be assigned by competitive bidding pursuant to Section 309(j).⁹

Likewise, the Blooston Rural Carriers support many of the Commission's objectives in proposing its new public safety licensing model. Providing for a single, nationwide public safety licensee will create significant economies of scale and scope, help spur the development of new 700 MHz technologies, and help to maximize efficiency in the use of public safety spectrum resources. However, certain aspects of the Commission's proposed public safety model, in particular its proposal to allow the national public safety licensee to offer leased access to its network to commercial service providers, are troubling. Allowing such commercial access, even on a preemptible and secondary basis, could prove detrimental to the viability of smaller and rural wireless carriers, threatening thousands of jobs and the availability of commercial services upon which rural consumers depend. Rural service providers and entrepreneurs (many of which qualify as small or very small businesses under the Commission's Rules) have made significant investments in their spectrum licenses and in the construction of rural wireless networks. They should have a reasonable expectation that the Commission will not create a heavily subsidized competitor – one that did not have to pay for its spectrum in a truly competitive bidding process, and that will garner compensation from public safety entities on a sole-source basis. Such an arrangement would threaten the fragile

⁸ 47 U.S.C. §337(a), as enacted by the Balanced Budget Act of 1997, Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997).

⁹ *Id.*

economics of many smaller carriers and very likely put some carriers out of business.

Many Lower 700 MHz band licensees from Auctions 44 and 49 (which concluded in September of 2002 and June of 2003) are only now beginning to construct wireless networks or they are still in the early stages of business planning with the DTV transition not scheduled to be complete for another two years (*i.e.*, until the February 17, 2009 analog TV shut-down date).¹⁰ Indeed, many small businesses and rural telephone companies that were successful bidders in last year's AWS-1 auction ("Auction No. 66") only recently received license grants from the Commission. It would be extremely unfair to these companies to allow a government-sponsored entity that obtained its spectrum under less-than-fully-competitive terms, and which enjoys nationwide economies of scale, to have additional regulatory advantages in leasing its spectrum capacity. Given the sparse population density of many rural areas, the newer technologies that the Commission contemplates will be used to construct such a broadband public safety network – "possibly employing OFDM or similar advanced waveforms" and "able to dynamically and efficiently exploit [. . .] unused spectrum fragments"¹¹ – would almost certainly provide sufficient network capacity that a reseller or nationwide carrier seeking a roaming partner would never need to worry that access to the rural network might be "preempted" because of an emergency. At a minimum, if the Commission allows a 700 MHz E-Block licensee to lease 100 percent of its commercial spectrum capacity, it should revisit its designated entity policies and rules and provide *bona fide* small

¹⁰ See Digital Television Transition and Public Safety Act of 2005, part of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (Feb. 8, 2006)

¹¹ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Ninth Notice of Proposed Rulemaking*, 72 Fed. Reg. 1201 (January 10, 2007) at

businesses and rural telephone companies the regulatory flexibility to do the same.

CONCLUSION

Wherefore, the Blooston Rural Carriers urge the FCC to adopt policies and rules for the upcoming auction of 700 MHz Band spectrum that are consistent with these comments.

Respectfully Submitted,

BLOOSTON RURAL CARRIERS

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Dated: May 23, 2007

Attachment A

The Blooston Rural Carriers

All West Communications, Inc.	Kamas, UT
BEK Communications Cooperative	Steele, ND
Big Bend Telephone Company	Alpine, TX
Cannon Valley Communications, Inc.	Bricelyn, MN
CC Communications	Fallon, NV
Chibardun Telephone Cooperative, Inc.	Dallas, WI
Clear Lake Independent Telephone Company	Clear Lake, IA
Command Connect, LLC	Sulphur, LA
Communications 1 Network	Kanawha, OA
Eastern Colorado Wireless, LLC	Wiggins, CO
FMTC Wireless, Inc.	Nora Springs, IA
Hancock Rural Telephone Corp d/b/a Hancock Telecom	Maxwell, IN
Harrisonville Telephone Company	Waterloo, IA
Haviland Telephone Company, Inc.	Haviland, IN
Heart of Iowa Communications	Union, IA
Interstate Telecommunications Cooperative	Clear Lake, SD
Kennebec Telephone Company, Inc.	Kennebec
Ligtel Communications, Inc.	Ligonier, IN
Manti Telephone Company	Manti, UT
Mid-Rivers Telephone Cooperative, Inc.	Glendive, NT
Midstate Communications, Inc.	Kimball, SD
Nucla-Naturita Telephone Company	Nucla, CO
Ponderosa Telephone Company	O'Neals, CA
Red River Rural Telephone Association, Inc.	Abercrombie, ND
Smithville Telephone Company	Ellettsville, IN
South Slope Cooperative Communications Co.	North Liberty, IA
Venture Communications Cooperative	Highmore, SD
Webster Calhoun Cooperative Telephone Association	Gowrie, IA
Yadkin Valley Telephone Membership Corp.	Yadkinville, NC